



Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
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DATE: July 23, 2021

ACTION: Notice of Rulemaking Action
Title 28, California Code of Regulations

SUBJECT: Adoption of Section 1300.63.4 in Title 28 of the California Code of Regulations (CCR), "Summary of Dental Benefits and Coverage Disclosure Matrix"; Control No. 2020-DEN.

PUBLIC PROCEEDINGS:

Notice is hereby given that the Director of the Department of Managed Health Care (Department) proposes to make final the emergency regulations under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), Title 28, California Code of Regulations (CCR), section 1300.64.4. This regulation was adopted on December 29, 2020 as an Emergency File and Print regulation, became effective January 25, 2021, and remains in effect until September 25, 2021.¹ Amendments proposed to the previous text and incorporated documents are noted in underline and strikeout. The Department is incorporating by reference the File and Print emergency filing, File No: 2021-0115-01EFP.

Before undertaking this action, the Director of the Department will conduct written public proceedings, during which time any interested person, or such person's duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this notice.

PUBLIC HEARING:

No public hearing is scheduled. Any interested person or his or her duly authorized representative, may submit a written request for a public hearing pursuant to Government Code section 11346.8(a). The written request for a hearing must be

¹ The Office of Administrative Law (OAL) approval of the emergency regulations provides that they remain in effect only until September 25, 2021. Nevertheless, Government Code section 11346.1(h) permits the Department to seek OAL approval of two separate readoptions of the regulations, each for a period of no more than 90 days.

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received by the Department's contact person, designated below, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD:

Any interested person, or his or her authorized representative, may submit written statements, arguments, or contentions (hereafter referred to as comments) relating to the proposed regulatory action by the Department. Comments must be received by the Department, Office of Legal Services, **by September 8, 2021**, which is hereby designated as the close of the written comment period.

Please address all comments to the Department's Office of Legal Services, Attention: Pamela Stone, Attorney III. Comments may be transmitted by regular mail, fax, email, or via the Department's website:

Website	http://www.dmhc.ca.gov/LawsRegulations.aspx#open
Email:	regulations@dmhc.ca.gov
Mail:	Department of Managed Health Care Office of Legal Services Attn: Pamela Stone, Attorney III 980 9 th Street, Suite 500 Sacramento, CA 95814
Fax:	(916) 322-3968

Please note: If comments are sent via the website, email, or fax, there is no need to send the same comments by mail delivery. All comments, including those submitted via the website, email, fax, or mail, should include the author's name and a U.S. Postal Service mailing address so the Department may provide commenters with notice of any additional proposed changes to the regulation text.

Please identify the action by using the Department's rulemaking title and control number, **Summary of Dental Benefits and Coverage Disclosure Matrix: Proposed Adoption of Section 1300.63.4 in Title 28 of the California Code of Regulations (CCR). Control No. 2020-DEN**, in any of the above inquiries.

CONTACTS: Inquiries concerning the proposed adoption of these regulations may be directed to:

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OR

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AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE:

The Department has prepared and has available for inspection and copying the Initial Statement of Reasons, text of the proposed regulation, and all information upon which the proposed regulation is based (rulemaking file). This information is available upon request to the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Sacramento, CA 95814, Attention: Regulations Coordinator.

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public. The full text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days before the date the Department adopts the regulation. A request for a copy of any modified regulation(s) must be addressed to the Regulations Coordinator. The Director will accept comments via the Department's website, mail, fax, or email on the modified regulation(s) for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

You may obtain a copy of the Final Statement of Reasons once it has been prepared by contacting the Regulations Coordinator named above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

The Notice of Proposed Rulemaking Action, the proposed text of the regulation, including documents incorporated by reference, and the Initial Statement of Reasons are also available on the Department's website at <http://www.dmhc.ca.gov/LawsRegulations.aspx#open>.

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AUTHORITY AND REFERENCE:

Health and Safety Code section 1344 grants the Director authority to adopt, amend, and rescind regulations as necessary to carry out the provisions of the Knox-Keene Act, including rules governing applications and reports, and defining any terms as are necessary to carry out the provisions of the Knox-Keene Act.

Health and Safety Code section 1363.04 provides authority for the regulations. The regulations implement, interpret and make specific Health and Safety Code section 1363.04. The Department proposes to adopt the emergency regulation as final with changes as described below.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW:

Summary of Existing Laws and Regulations

Health and Safety Code (HSC) section 1341, subdivision (a), authorizes the Department to regulate health plans. Pursuant to HSC section 1341.9, the Department is vested with all duties, powers, purposes, responsibilities, and jurisdiction as they pertain to health care service plans and the health care service plan business. HSC section 1349 provides that any person that engages in business as a health care service plan must be licensed by the director of the Department. HSC section 1345, subdivision (f)(1), defines a “health care service plan” or “specialized health care service plan” as “any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost of those services in return for a prepaid or periodic charge paid by or on behalf of subscribers or enrollees.” HSC section 1345, subdivision (o) defines a “specialized health care service plan contract” as “a contract for health care services in a single specialized area of health care, including dental care...” HSC section 1344 authorizes the director to adopt rules to carry out chapter 2.2, division 2, HSC, known as the Knox-Keene Health Care Service Plan Act of 1975.

HSC section 1363.04 provides in part: “a health care service plan that issues, sells, renews, or offers a contract that covers dental services in this state, in addition to any other applicable disclosure requirements, shall utilize a uniform benefits and coverage disclosure matrix, which shall be developed by the department, in conjunction with the Department of Insurance, and in consultation with stakeholders.” HSC section 1363.04 also describes the minimum contents of the matrix and outlines requirements for use and distribution of the matrix. In addition, the law authorized Department’s adoption of emergency regulations to implement section 1363.04. The Department proposes to adopt the emergency regulation as final with some changes as described below.

The proposed regulation adopts the emergency regulation and does the following:

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Revises the regulation text, section 1300.63.4 as follows:

- Amend subdivision (a)(1) by establishing the compliance date of on or after January 1, 2022;
- Amend subdivision (b)(1) to correct a typographical error in a cross-referenced citation;
- Amend subdivision (c) to correct an error in the subject of the regulation;
- Amend subdivision (c)(1) to revise the dates of the two incorporated documents, Summary of Dental Benefits and Coverage Disclosure Matrix, and the Instruction Guide for Summary of Dental Benefits and Coverage Disclosure Matrix;
- Amend subdivision (c)(3) to specify the date by which health care service plans and specialized health care service plans must affirm to the Department compliance with the proposed regulation;
- Amend subdivision (d)(1)(E)3. by making a nonsubstantive grammatical change;
- Amend subdivision (d)(1)(E)3.d. to replace a reference to the group with a reference to the enrollee;
- Amend subdivision (d)(2)(B) to insert a word that was inadvertently omitted;
- Amend subdivision (d)(2)(D)3. by making a nonsubstantive, grammatical change;
- Amend subdivision (d)(2)(D)(3)(c.) for consistency with a previous reference to federal and state law in the text;
- Amend subdivision (d)(3)(E)3. to clarify the group contractholder's required website delivery method of the SDBC; and
- Amend subdivision (j) to insert a reference to the code in which the section of law is found.

Modifies the two incorporated documents, the Instruction Guide and SDBC, by revising the dates of the documents.

Revises the Instruction Guide for Summary of Dental Benefits and Coverage Disclosure Matrix as follows:

- Amend Part II to clarify the information to be included in the Summary of Dental Benefits and Coverage Disclosure Matrix;
- Amend Part III to add a fourth option, which is to enter a dollar amount; and
- Amend Part V to revise the description of three of the listed dental services.

Revises the SDBC as follows:

- Remove the Department logo; remove the identifying information from the

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- header and substitute a footnote with identifying information;
- Amend Part III to clarify the information to be included and to add an option to enter a dollar amount;
- Amend Part V to revise the description of two of the listed dental procedures;
- Amend Part VI to revise the dollar amounts in the Coverage Example, Total Cost of Care; and
- Amend Part VI to add an option to enter a dollar amount for the maximum out-of-network cost.

Purpose of the Proposed Regulations

The purpose of this rulemaking action is to implement, clarify and make specific Health and Safety Code section 1363.04. A major component of the proposed regulation is the incorporation by reference of two documents: the “Summary of Dental Benefits and Coverage Disclosure Matrix” (SDBC) and “Instruction Guide of Summary of Dental Benefits and Coverage Disclosure Matrix” (Instruction Guide), which consists of directions for plans to follow when filling out the SDBC. The purpose and necessity of each proposed provision is detailed in the Initial Statement of Reasons for this rulemaking package.

Anticipated Benefits of the Proposed Regulations:

The text of the regulation clarifies the requirements of the statute by identifying who must provide the SDBC, to whom it must be provided, and methods for delivering the SDBC. As noted above, the text also incorporates two documents by reference: the SDBC and the Instruction Guide.

The Department anticipates that these regulations will benefit California residents and protect public health by ensuring that they have access to useful and comparable information regarding the extent of coverage and costs of dental services offered by various health plans and dental plans.

The regulations serve an important purpose in increasing transparency in the area of dental plan coverage. The regulations serve to inform consumers of the relative costs and benefits of different dental plans. The requirements of the regulations will allow prospective enrollees to compare coverage and costs among dental plans.

The SDBC and the Instruction Guide are described in detail in the Initial Statement of Reasons document for this regulation package. Briefly, the SDBC is beneficial because it provides consumers an overall summary of the benefits and coverage of the dental plan. The SDBC serves as a reference guide to benefits available, the limitations for those benefits, and the exclusions to those benefits in a short, easy to read format. The Instruction Guide is beneficial because it provides comprehensive instructions for the health plans and dental plans in completing the SDBC, thereby simplifying the plans’

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task. Further, comprehensive instructions will ensure plans are uniformly filling out the SDBC.

The Department believes the adoption of these proposed regulations will have significant benefits for consumers in accessing appropriate dental health care services and will enable consumers to compare available dental benefits in the marketplace.

Evaluation of consistency / compatibility with existing state regulations

The DMHC has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the DMHC has concluded that the regulations at issue are the only regulations that concern disclosures by health plans regarding their coverage for dental services.

FORMS INCORPORATED BY REFERENCE

Pursuant to Title 1, California Code of Regulations, section 20(c)(3), and as cited to in the proposed regulations, the DMHC is incorporating by reference the following: Summary of Dental Benefits and Coverage Disclosure Matrix, DMHC 10-278, and the Instruction Guide for Summary of Dental Benefits and Coverage Disclosure Matrix, DMHC 10-277. Both documents were also incorporated by reference in the emergency regulation, and both are proposed to be amended by this rulemaking. The SDBC and Instruction Guide are explained in detail in the Initial Statement of Reasons for this proposed regulation package.

FEDERAL REGULATIONS OR STATUTES

The DMHC has determined there are no existing comparable federal regulations or statutes.

OTHER MATTERS PRESCRIBED BY STATUTE

There are no other requirements prescribed by statute that are applicable to the DMHC or to any specific regulation or class of regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

- Mandate on local agencies or school districts: None.
- Cost to Any Local Agency or School District Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Cost or Savings to any State Agency: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
Costs or Savings in Federal Funding to the State: None.

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- Effect on Housing Costs. None.
- Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. None.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT

Introduction

The Department is mandated to promulgate this regulation pursuant to Senate Bill 1008 (Skinner, Stats. 2018, ch. 933, § 2). This bill added Health and Safety Code section 1363.04 to the Knox-Keene Act and requires health care plans offering dental coverages that issue contracts covering dental benefits use a uniform benefits and coverage disclosure matrix to be developed by the Department. The statute further requires that the matrix represent a particular set of benefits and cost-sharing, to facilitate consumers understanding of dental benefits and to allow consumers to compare dental benefits available in the marketplace.

The Affordable Care Act (ACA), under 45 Code of Federal Regulations (CFR) section 147.200, requires health plans to provide a Summary of Benefits and Coverage to consumers who are previewing health coverage and who are enrolled in health coverage. In adopting SB 1008, the California legislature intended to provide the same transparency for dental benefits as is currently offered in federal law for health benefits.

One of the goals of the ACA is to increase insurance market competition by enabling consumers to more completely and accurately compare benefits. The ACA seeks to improve transparency and comparability in health benefits through the health insurance marketplace and consumer-friendly tools such as the standardized summary of benefits and coverage. The standardized SDBC required under SB 1008 helps consumers make such comparisons between dental plan coverage regulated by the Department.

All of the provisions within the proposed regulation are clarifying and making specific the requirements of Health and Safety Code section 1363.04. Particularly, the proposed regulation provides health plans with the SDBC template, instructions on how to fill out the template, and describes when the SDBC is to be delivered to consumers and how it is to be delivered to consumers. The statute mandates the Department to develop the SDBC and the statute requires plans offering dental coverage to provide the template to consumers or enrollees at certain times and in certain circumstances. The Department clarifies delivery methods and delivery times in the proposed regulation. There are no additional requirements for plans offering dental coverage beyond clarifying and making specific the statutory requirements. Health and dental plans subject to the statute may be required to undergo some costs related to updating computer systems, printing costs, or other costs associated with distributing the SDBC to consumers;

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however, those costs are attributed to the requirement in the statute that health and dental plans provide SDBC's to enrollees and consumers.

Therefore, the Department has made a determination that no additional workload to the Department or impacted health and dental plans exist that are specifically associated with the proposed regulation itself beyond what is required in the statute. The Department has also concluded that any savings a plan may realize following implementation of the regulations would be due to the requirements of the statute, not the regulations.

Creation or elimination of jobs within California

As this regulation would impose no costs or savings to plans, it would not cause plans to create or eliminate jobs. This regulation is designed to help consumers and enrollees easily review and compare the different dental benefits available in the marketplace. When choosing a dental plan, consumers weigh many options, including premium costs and benefits available under a particular dental plan product. Any decisions by consumers following implementation of the regulations that result in plans creating or eliminating jobs creation of new businesses or elimination of existing businesses would be due to the requirements of the statute, not the regulation. Accordingly, the Department has determined that no new jobs will be created or eliminated in the state of California as a result of the regulation.

Creation of new businesses or elimination of existing businesses within California

This regulation is designed to assist health plans offering dental coverage and enrollees in determining their dental benefit coverage as well as to help consumers and enrollees easily review and compare the different dental benefits available in the marketplace. When choosing a dental plan, consumers weigh many options, including premium costs and benefits available under a particular dental plan product. Any decisions by consumers following implementation of the regulation that result in creation of new businesses or elimination of existing businesses would be due to the requirements of the statute, not the regulation. Accordingly, the Department has determined the proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California.

Expansion of businesses currently doing business within California

This regulation is designed to assist health and dental plans and enrollees in determining their dental benefit coverage as well as to help the enrollees easily review and compare the different dental benefits. The health plan marketplace is competitive within California. When choosing a health plan, consumers weigh many options, including premium costs and benefits available under a particular dental plan product. As noted above, any increase in jobs or shift of consumers from one plan to another following implementation of the regulation would be due to the dictates of the statute, not the regulation. Accordingly, the Department has determined the proposed

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regulation will not result in the expansion of businesses currently doing business within the State of California.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

The proposed regulations benefit the health and welfare of California residents by ensuring that prospective and current enrollees in health care plans covering dental services are given the information needed to select a dental plan. Because the cost comparisons are thus made clear to consumers, they are more likely to select a plan that they can afford and that protects their dental health. For additional benefit analysis, please see "Anticipated Benefits of the Proposed Regulation" found under the Informative Digest/Policy Statement Overview. There are no anticipated benefits to worker safety and the State's environment by the proposed action.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTING REQUIREMENT

The proposed regulation incorporates by reference the SDBC, which enables enrollees to understand and compare dental coverage available in the marketplace. The proposed regulation and SDBC are necessary for the health, safety, or welfare of the people of the state.

SMALL BUSINESS DETERMINATION

The Department has determined the regulation does not affect small businesses. Health care service plans are not considered a small business under Government Code section 11342.610(b) and (c).

ALTERNATIVES CONSIDERED:

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency (1) would be more effective in carrying out the purpose for which the action is proposed, (2) would be as effective and less burdensome to affected private persons than the proposed action, (3) there are no anticipated benefits to worker safety and the State's environment by the proposed action, or (4) would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with

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respect to alternatives to the requirements of the proposed regulations during the written comment period.